

Article - Estates and Trusts

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§15–502.1.

(a) A trustee may convert a trust into a unitrust as described in this section if:

(1) The trustee receives a written request from a beneficiary to exercise the power conferred by this subsection to convert to a unitrust;

(2) The trustee invests and manages the trust assets in the manner set forth in § 15–114(b) and (c) of this title;

(3) The trustee determines that the conversion will enable the trustee to better carry out the intent of the person who created the trust and the purposes of the trust; and

(4) (i) The trustee complies with the notice requirements of § 15–502.3 of this subtitle and all qualified beneficiaries consent; or

(ii) A court reviews a petition filed under § 15–502.3 of this subtitle and approves the proposed decision to convert to a unitrust.

(b) In deciding whether to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the creator of the trust;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust and:

(i) The extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

(ii) The extent to which an asset is used by a beneficiary; and

(iii) Whether an asset was acquired by the trustee or received from the creator of the trust;

(6) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(7) The actual and anticipated effect of economic conditions on principal and income and the effects of inflation and deflation; and

(8) The anticipated tax consequences of a unitrust conversion.

(c) After a trust is converted to a unitrust, all of the following apply:

(1) The income of the trust that the income beneficiary is entitled to receive under the governing instrument shall be an annual unitrust distribution equal to a payout percentage of 4% of the net fair market value of the trust's assets, whether those assets would be considered income or principal under any other provision of this subtitle, averaged over the lesser of:

(i) The 3 preceding years; or

(ii) The period during which the trust has been in existence;

(2) Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution;

(3) Any provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal may not be affected by the conversion to a unitrust;

(4) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid first from net income of the trust, as net income would be determined if the trust were not a unitrust, and then from principal; and

(5) The trustee may determine to account for the unitrust distribution in accordance with the following rules:

(i) To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains;

(ii) To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains; and

(iii) To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(d) The trustee shall determine:

(1) The effect of other payments from or contributions to the trust on the trust's valuation;

(2) How frequently to value nonliquid assets and whether to estimate their value; and

(3) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(e) If authorized by a court order, in accordance with a petition filed under § 15-502.3 of this subtitle, the converted unitrust may provide that:

(1) The payout percentage is different than 4%;

(2) A distribution of net income, as would be determined if the trust were not a unitrust, shall be made if in excess of the unitrust distribution and if that distribution is necessary to preserve a tax benefit; or

(3) Valuation of the trust's net assets shall be averaged over a period other than 3 years.

(f) A trustee may not convert a trust into a unitrust under subsection (a) of this section if:

(1) The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed, in whole or in part, if the trustee did not have the power to convert;

(2) Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(3) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside;

(4) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to convert;

(5) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to estate or gift tax with respect to an individual and the assets would not be subject to estate or gift tax with respect to the individual if the trustee did not possess the power to convert; or

(6) The trustee is a beneficiary of the trust.

(g) (1) If subsection (f)(4), (5), or (6) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust to a unitrust under subsection (a) of this section, unless exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection (f)(4), (5), or (6) of this section applies to all the trustees, the trustees may petition a court under § 15–502.3 of this subtitle to direct a conversion under subsection (a) of this section.

(h) (1) A trustee may release the power conferred by subsection (a) of this section to convert to a unitrust if:

(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (f)(4), (5), or (6) of this section; or

(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (f) of this section.

(2) A release described in paragraph (1) of this subsection may be permanent or for a specified period, including a period measured by the life of an individual.

(i) If the trustee receives a written request from a beneficiary to reconvert a trust from a unitrust, the trustee may reconvert a trust from a unitrust if:

(1) The trustee complies with the notice requirements of § 15–502.3 of this subtitle and all qualified beneficiaries consent to reconvert from a unitrust; or

(2) A court reviews a petition filed under § 15–502.3 of this subtitle and approves the proposed decision to reconvert from a unitrust.

(j) Unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power conferred by subsection (a) of this section, the terms of a trust that limit the power of a trustee to convert to a unitrust do not affect the application of this section.

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